

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SPEECH FIRST, INC.,

Plaintiff,

v.

GREGORY L. FENVES, in his official
capacity as President of the University of
Texas at Austin, et al.,

Defendants.

Case No. 1:18-cv-1078-LY

NOTICE OF DISMISSAL

Plaintiff, Speech First, Inc., hereby dismisses Counts I-VI of the complaint with prejudice and Counts VII-VIII of the complaint without prejudice. Each party to bear its own costs, expenses, and attorney's fees.

Respectfully submitted,

Dated: December 22, 2020

/s/ Cameron T. Norris

William S. Consovoy
Jeffrey M. Harris
J. Michael Connolly
Cameron T. Norris
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Counsel for Plaintiff Speech First, Inc.

CERTIFICATE OF SERVICE

I certify that, on December 22, 2020, I electronically filed this notice with the Clerk using CM/ECF, which will notify all counsel of record.

/s/ Cameron T. Norris

AGREEMENT

This Agreement (the “Agreement”) is entered into on the date of signature of the last signatory to this Agreement (“Effective Date”) by and between Speech First, Inc. (“Speech First”) on the one hand and the University of Texas at Austin (the “University”) on the other (collectively, the “Parties”), as follows:

A. WHEREAS, by complaint filed on December 13, 2018, Speech First brought claims against Gregory L. Fenves in his official capacity as President of the University of Texas at Austin, and others (“Defendants”), in the matter styled *Speech First, Inc. v. Fenves*, 1:18-cv-1078-LY (W.D. Tex.) (“Action”);

B. WHEREAS, on December 21, 2018, Speech First moved for a preliminary injunction relating to its claims concerning the University’s verbal harassment policy, Acceptable Use Policy, Residence Hall Manual, and Campus Climate Response Team;

C. WHEREAS, Defendants opposed Speech First’s motion;

D. WHEREAS, on June 4, 2019, the U.S. District Court for the Western District of Texas denied Speech First’s motion and dismissed its case;

E. WHEREAS, on October 28, 2020 (opinion revised November 9, 2020), the U.S. Court of Appeals for the Fifth Circuit vacated the district court’s opinion and remanded for further proceedings.

F. WHEREAS, the Parties have determined that it is in their mutual interests to amicably resolve all issues between them;

NOW, THEREFORE, in consideration of the foregoing and of the mutual undertakings of the Parties set out herein, the Parties agree as follows:

1. With respect to the University’s Acceptable Use Policy, in August 2019, the University removed the provision that stated, “Be civil. Do not send rude or harassing correspondence.” The University will not reinstate the removed provision.

2. With respect to the University’s Residence Hall Manual, in August 2019, the University revised the provisions titled “Harassment” and “Incivility.” The University will not reinstate the former provisions.

3. With respect to the University’s verbal harassment policy, in August 2019, the University amended its definition of verbal harassment. The University will not reinstate the former definition, and it will remove all references to the former definition from its policies. The University will delete Handbook of Operating Procedures 9-1810, Hate and Bias Incidents (Mar. 8, 2017), policies.utexas.edu/policies/hate-and-bias-incidents. The University will further amend the definition of verbal harassment by deleting §13-204(b)(1), deleting the second sentence of §13-204(c), and deleting the second sentence of §13-204(d).

4. With respect to the University's Campus Climate Reporting Team ("CCRT"), the University will discontinue the CCRT. The University is free to devise an alternative to the CCRT, but Speech First is free to challenge that alternative.

5. Within two (2) business days of the Effective Date, Speech First shall file a Notice of Dismissal in the form attached hereto, dismissing all claims pending against Defendants in the Action.

6. The Parties shall bear their respective attorneys' fees, costs, and expenses relating to the Action and this Agreement.

7. Nothing contained in this Agreement shall be deemed as an admission of any liability or lack of merit in any claim or defense, by any Party.

8. This Agreement represents the full and complete agreement between the Parties to resolve their dispute. Any representations, warranties, promises, or conditions, whether written or oral, not specifically incorporated into this Agreement shall not be binding on the Parties. All other discussions, negotiations, and writings have been and are merged into this Agreement.

9. Neither this Agreement nor any terms or provision hereof may be changed, waived, discharged, or terminated except by an instrument in writing duly signed by the Party against which enforcement of the change, waiver, discharge, or termination is sought.

10. This Agreement shall be governed and construed in accordance with the laws of the State of Texas applicable to contracts made and to be performed wholly within the State of Texas, without regard to its conflict-of-laws provisions.

11. All Parties hereto agree that in the event of any ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party hereto participated equally in the drafting hereof.

12. This Agreement may be signed in two original counterparts, each of which shall for all purposes be considered an original of this Agreement. Execution and delivery of this Agreement by electronic means (including via e-mail or .pdf) shall be sufficient for all purposes and shall be binding on any person or Party who so executes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date set forth above.

Date: 12/22/20


Speech First, Inc.

By: Nicole K. Nelly, President

Date: 12/22/20


University of Texas at Austin

By: Jay Hartzell, President

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